

# EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

\_\_\_\_\_  
X  
In Re: Chapter 11  
Case No.  
  
01-01139 JKF

W.R. Grace & Co., et al.,

(Jointly  
Debtors. Administered)  
\_\_\_\_\_  
X

— — —  
June 12, 2009

— — —

DEPOSITION of ELIHU INSELBUCH,  
held at the offices of Caplin &  
Drysedale, Chartered, 375 Park Avenue,  
New York, New York, commencing at  
approximately 9:37 A.M., on the above  
date, before Lisa Lynch, a Registered  
Merit Reporter, New Jersey Certified  
Court Reporter, License No. XI00825,  
and Certified Realtime Reporter

— — —

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Page 11	Page 13
<p>1 ELIHU INSELBUCH,</p> <p>2 having been sworn by the Notary</p> <p>3 Public of the States of New</p> <p>4 York and New Jersey, was</p> <p>5 examined and testified as</p> <p>6 follows:</p> <p>7</p> <p>8 MR. COHN: All right.</p> <p>9 Let's start off marking this as</p> <p>10 Exhibit 1.</p> <p>11 (Notice of Deposition</p> <p>12 marked for identification as</p> <p>13 Inselbuch Exhibit 1.)</p> <p>14</p> <p>15 EXAMINATION BY</p> <p>16 MR. COHN:</p> <p>17 <b>Q. Good morning.</b></p> <p>18 A. Good morning.</p> <p>19 <b>Q. As you know, I'm Dan</b></p> <p>20 <b>Cohn, counsel for the Libby</b></p> <p>21 <b>claimants.</b></p> <p>22 <b>I've placed in front of you a</b></p> <p>23 <b>document marked Exhibit 1. Do you</b></p> <p>24 <b>recognize it?</b></p>	<p>1 <b>McGarvey Heberling or Lewis Slovack</b></p> <p>2 <b>in Montana?</b></p> <p>3 A. I understand that some</p> <p>4 of them may be clients of those</p> <p>5 firms.</p> <p>6 <b>Q. Well, you understand the</b></p> <p>7 <b>ones that are being represented here</b></p> <p>8 <b>today at the deposition?</b></p> <p>9 MR. FINCH: Objection.</p> <p>10 You can answer.</p> <p>11 <b>Q. And you understand these</b></p> <p>12 <b>are people who are represented in the</b></p> <p>13 <b>bankruptcy case also by my firm, Cohn</b></p> <p>14 <b>Whitesell &amp; Goldberg?</b></p> <p>15 A. I understand that you</p> <p>16 represent some people and that the</p> <p>17 other two firms represent some</p> <p>18 people. My understanding of the</p> <p>19 concept of the Libby claimants are</p> <p>20 claimants that may have claims now or</p> <p>21 may in the future have claims against</p> <p>22 Grace who reside in the Libby area.</p> <p>23 <b>Q. And who claim to have</b></p> <p>24 <b>been exposed -- excuse me -- to have</b></p>

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MR. FINCH: Object to form.

A. I don't know what you mean. I have served as, and do serve as, counsel to some of the trust advisory committees.

**Q. And would you explain for the record what a trust advisory committee is?**

MR. FINCH: Object to form.

A. Under the terms of these plans and under the terms of the TDPs that are part of the plan documents, an entity is created called a trust advisory committee which consists of one or more attorneys who have responsibilities that are defined within the TDP documents and within the trust agreement documents.

MR. J. COHN: Dan, let's just note the arrival of two more counsel. Would you identify yourselves?

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MR. MUELLER: Alex Mueller from Mendes & Mount for certain London market insurance companies.

MS. DeCHRISTOFARO: Elizabeth DeChristofaro from Ford Marrin for Continental Casualty Company and Continental Insurance Company.

THE WITNESS: Those appearances are not part of the roles of the TACs, and I don't remember where I was in the middle of my answer.

MR. COHN: Well, let's help you by reading back as far as you got in this answer.

(Off the record.)

(The Reporter reads the last answer.)

BY MR. COHN:

**Q. Do you have anything to add?**

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A. That's enough.

**Q. And in that capacity, have you been actually called upon to render advice to those trust advisory committees?**

A. From time to time.

**Q. Now, what is your role in the W.R. Grace Chapter 11 case?**

A. My firm is counsel to the asbestos creditors committee.

**Q. And what is your personal role in connection with that representation?**

A. I suspect that I am the lead counsel.

**Q. You suspect or is that what you are?**

A. What I am is in the eye of the beholder.

**Q. Did you participate in negotiations concerning the plan -- strike that.**

**Did you participate in negotiations that led to the filing**

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**of the Chapter 11 plan that is now coming before the Bankruptcy Court?**

A. I did.

**Q. Would you describe your role in those negotiations?**

A. I was counsel to the asbestos creditors committee.

**Q. Would it be fair to say that you were the lead negotiator for the asbestos creditors committee?**

MR. FINCH: Object to form.

A. I wouldn't say so.

**Q. Who else participated in the negotiations on behalf of the ACC?**

A. Well, if we're talking about the part of the negotiations that involve the crafting and agreement to the term sheet or the economic arrangements with the debtor, the committee -- when I say "the committee", I mean the asbestos creditors committee -- the committee

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1 appointed a negotiating subcommittee  
2 that attended those negotiations and  
3 I attended with them.

4 That negotiating subcommittee,  
5 as I remember, consisted of Mr. Rice;  
6 Mr. Weitz, W-e-i-t-z; Mr. Cooney, and  
7 one or both of Mr. Budd and/or Mr.  
8 Baron.

9 If we're talking about the  
10 negotiations thereafter that involved  
11 work with the futures rep and other  
12 plan proponent constituencies in  
13 developing what became the documents  
14 that reflect the plan, I played a  
15 minor role in that other than --  
16 well, I should say I played a minor  
17 role in that other than in connection  
18 with the development of the trust  
19 agreement and the TDP.

20 The other documents and the  
21 negotiation of those documents were  
22 assigned by the committee to my  
23 partner, Mr. Lockwood, and others who  
24 worked under his leadership.

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1 could compare it with my copy of the  
2 term sheet that I signed and figure  
3 out whether it's the same document,  
4 but I have no way of knowing. If you  
5 represent to me that it is, I'll  
6 accept your representation.

7 **Q. Well, yes, let me**  
8 **represent to you that's the same**  
9 **document that I have always seen and**  
10 **has always been represented to me to**  
11 **be the correct term sheet.**

12 A. Well, I have a book in  
13 front of me with three documents that  
14 I've been working with. One is the  
15 TDP as it exists in the plan, one is  
16 the trust agreement as it exists in  
17 the plan and the other is the term  
18 sheet that I signed.

19 MR. COHN: Let's go off  
20 the record.

21 (Off the record.)

22 (Term sheet, seven  
23 pages, marked for  
24 identification as Inselbuch

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1 **Q. So is it fair to say on**  
2 **behalf of the ACC you were the person**  
3 **primarily responsible for the trust**  
4 **agreement and the TDP?**

5 A. I was the counsel  
6 primarily involved in that work.

7 MR. COHN: Let's mark  
8 this as Exhibit 2, please.

9 (Term sheet, 11 pages,  
10 marked for identification as  
11 Inselbuch Exhibit 2.)

12 BY MR. COHN:

13 **Q. Do you have Exhibit 2 in**  
14 **front of you?**

15 A. I do.

16 **Q. Do you recognize it?**

17 A. No.

18 **Q. If you would turn to the**  
19 **last four pages of that document, let**  
20 **me ask you whether you recognize**  
21 **those four pages.**

22 A. I do not. It purports  
23 to be the term sheet. I've never  
24 seen it in this form so I guess I

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1 Exhibit 2A.)

2 (Preliminary Expert  
3 Report on W.R. Grace Trust by  
4 Mark Peterson dated March  
5 2009 marked for identification  
6 as Inselbuch Exhibit 3.)

7 (Exhibit 4 to Exhibit  
8 Book, Trust Distribution  
9 Procedures, marked for  
10 identification as Inselbuch  
11 Exhibit 4.)

12 MR. COHN: All right,  
13 back on the record.

14 **Q. Do you now have in front**  
15 **of you a document that has been**  
16 **marked as Exhibit 2A?**

17 A. Yes, sir.

18 **Q. Do you recognize that**  
19 **one?**

20 A. I do.

21 **Q. Tell us what it is.**

22 A. It's the term sheet that  
23 was signed among the debtor, the  
24 futures rep, the committee and I



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1 believe the equity. Yes, the equity  
2 committee I guess they're called.

3 **Q. Okay. And when you said**  
4 **"the committee" in your answer, you**  
5 **meant the Asbestos Claimants**  
6 **Committee?**

7 A. Yes. I will mean that  
8 always.

9 **Q. Terrific. And that's**  
10 **also what we mean when we say ACC?**

11 A. Yes.

12 **Q. Now, does this document,**  
13 **Exhibit 2A, reflect the entire deal**  
14 **amongst those parties concerning the**  
15 **subject matter thereafter at the time**  
16 **that it was entered into?**

17 MR. FINCH: Object to  
18 form.

19 A. Like all term sheets, it  
20 reflects all the points that the  
21 people who signed it thought needed  
22 to be put on paper at the time.

23 **Q. And what points were**  
24 **agreed to but not put on paper?**

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1 A. None that I recall. But  
2 for sure when you -- when you  
3 negotiate a term sheet, you  
4 understand that what will evolve in  
5 what are much more complicated  
6 documents are issues subsidiary to  
7 the issues that are agreed in the  
8 term sheet that will need to be  
9 resolved over time within the context  
10 of the term sheet agreement.

11 **Q. Were there any**  
12 **understandings reached in connection**  
13 **with this term sheet that would not**  
14 **rise to the level of an agreement?**

15 A. Not --

16 MR. FINCH: Object to  
17 form.

18 A. -- that I recall.

19 **Q. And specifically**  
20 **concerning treatment of Libby claims,**  
21 **were there any agreements or**  
22 **understandings?**

23 A. Not that I recall, other  
24 than what's provided in the

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1 document.

2 **Q. Have you reviewed a**  
3 **transcript of the recent deposition**  
4 **of Peter Lockwood?**

5 A. I read it briefly,  
6 quickly.

7 **Q. In that brief reading,**  
8 **did you come across any statements**  
9 **made by Mr. Lockwood with which you**  
10 **disagreed?**

11 MR. FINCH: Object to  
12 form, vague, overbroad.

13 A. Yeah, there was one  
14 place where he was talking about or  
15 answering questions that had to do  
16 with a provision in the term sheet --  
17 in the TDP -- let's see -- in the  
18 extraordinary claims section as to  
19 whether or not that portion of the  
20 extraordinary claims criteria which  
21 requires that there not be the  
22 potential for substantial recovery  
23 elsewhere would apply to the  
24 extraordinary claim that would

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1 satisfy the criteria otherwise for an  
2 eight times treatment. He was  
3 unclear about that, at best, and  
4 perhaps wrong. My understanding of  
5 that provision is that that  
6 requirement is included in either  
7 category of the extraordinary claims  
8 treatment.

9 **Q. All right. To qualify**  
10 **for the eight times multiplier under**  
11 **extraordinary claims treatment, you**  
12 **must, in addition to meeting the**  
13 **exposure criteria set forth in the**  
14 **TDP, also show little likelihood of**  
15 **substantial recovery elsewhere?**

16 A. Whatever that language  
17 is, yes, for sure.

18 **Q. Any other statements**  
19 **come to mind that you saw with which**  
20 **you did not agree?**

21 MR. FINCH: Object to  
22 form.

23 A. Not that I recall off  
24 the top of my head.



Page 30

1 **Q. Have you reviewed a**  
2 **transcript of the recent deposition**  
3 **of Mark Peterson?**

4 A. No.

5 **Q. All right. Let me now**  
6 **hand you a document that has been**  
7 **marked as Exhibit 3. This is Dr.**  
8 **Peterson's report.**

9 MR. COHN: What I'm  
10 handing around the room are  
11 just the pages on which I  
12 intend to ask questions because  
13 otherwise the copying would  
14 have been voluminous.

15 **Q. I'm sorry. Did I --**

16 A. You didn't ask me  
17 anything.

18 **Q. Thank you. Do you**  
19 **recognize the document that has been**  
20 **marked Exhibit 3?**

21 A. I recognize it says what  
22 it says it is.

23 **Q. Which is what?**

24 A. It says it's the

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1 Preliminary Expert Report on W.R.  
2 Grace Trust by Mark Peterson of Legal  
3 Analysis Systems dated March 2009.

4 **Q. And do you know Dr.**  
5 **Peterson?**

6 A. I do.

7 **Q. What is his capacity in**  
8 **this case?**

9 A. He is engaged as an  
10 expert to assist the asbestos -- to  
11 assist the committee.

12 **Q. Thank you.**

13 **Let me now hand you a document**  
14 **that's been marked as Exhibit 4. I**  
15 **will represent to everyone concerned**  
16 **this is a copy of the trust**  
17 **distribution procedures, or TDP, that**  
18 **has been attached to the plan.**

19 MR. COHN: In accordance  
20 with our custom at these  
21 depositions, the parties will  
22 use their own copies to refer  
23 to but we understand it is the  
24 same document.

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1 **Q. Do you recognize Exhibit**  
2 **4, Mr. Inselbuch?**

3 A. I accept your  
4 representation that it is what it  
5 says it is.

6 **Q. Okay, thank you.**

7 **Now, let me ask you to look at**  
8 **Exhibit 3, which is Dr. Peterson's**  
9 **report, and take a look at page five.**

10 A. I'm at page five.

11 **Q. All right.**

12 A. I should warn you I'm  
13 reading this for the first time.

14 **Q. Okay. Let me point you**  
15 **then to exactly the statement I want**  
16 **you to read. Would you read the**  
17 **first sentence of the second**  
18 **paragraph on page five?**

19 A. Yes.

20 **Q. Would you like to read**  
21 **it out loud, please, for the**  
22 **record?**

23 A. "The trust's TDP follows  
24 the standard form used for almost

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1 every asbestos trust created since  
2 2002."

3 **Q. Do you agree with that**  
4 **statement?**

5 A. Yes.

6 **Q. So when I talk about the**  
7 **standard form or a term such as that,**  
8 **you'll understand that I'm referring**  
9 **to what Dr. Peterson is referring to**  
10 **here, which is the standard form of**  
11 **TDP that has been used for almost**  
12 **every asbestos trust created since**  
13 **2002?**

14 MR. FINCH: Object to  
15 form.

16 A. Is that a question?

17 **Q. Will you understand that**  
18 **that's what I mean by that term?**

19 A. Okay.

20 **Q. Now, in this case there**  
21 **were some departures from the**  
22 **standard form; is that correct?**

23 A. In each case there is  
24 some departures from the standard

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Page 36

1 form and there were some here too.

2 **Q. Who drafted the TDP in**  
3 **this case?**

4 A. The TDP that evolved  
5 into the one in this case?

6 **Q. Yes.**

7 A. That's now on file?

8 **Q. Exhibit 4.**

9 A. The first draft, my  
10 office, probably Anne McMillan.

11 **Q. And how did the document**  
12 **evolve from that first draft into**  
13 **Exhibit 4?**

14 A. Okay. You will recall  
15 that at some point the Court relieved  
16 the debtor's exclusivity. At that  
17 point the committee and the futures  
18 rep determined to file their own  
19 plan, proposed plan of  
20 reorganization.

21 In that connection, it was  
22 understood that there would be the  
23 need for a trust agreement and a TDP  
24 and it was at that point, which I

1 the committee and the futures rep on  
2 the terms of the TDP.

3 Events then overtook that plan.  
4 In fact, the events that you make  
5 reference to with this term sheet  
6 which was signed -- I'm referring to  
7 Exhibit 2A -- in early April of 2008  
8 and now there was a TDP that needed  
9 to be considered by the other plan  
10 proponents because it would now not  
11 be associated with a separate plan  
12 that had been filed by the committee  
13 and the futures rep but, rather,  
14 would evolve into a plan that would  
15 be filed by the plan proponents as  
16 part of that plan.

17 In the spring of 2008 the  
18 committee and the futures rep were  
19 already aware of criticisms that  
20 counsel for some of the Libby  
21 claimants had with the terms of the  
22 TDP and we entered into a dialogue at  
23 the instructions of the committee  
24 with you and with Mr. Heberling to

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1 believe was somewhere in the fall of  
2 2007, that we began the preparation  
3 of the TDP.

4 A draft was crafted by our  
5 office for consideration by the  
6 committee. After the committee  
7 considered the draft and considered  
8 input from Dr. Peterson, the draft  
9 was put in a form that was then  
10 submitted to the futures rep's  
11 counsel for their consideration. And  
12 after we received their comments and  
13 suggestions, the draft was further  
14 edited and reconsidered by the  
15 committee and sometime by the  
16 beginning/early part of 2008 there  
17 was a TDP that was agreeable to the  
18 committee and to the futures rep.

19 Prior to that time we had  
20 actually filed a plan, I believe,  
21 that was proposed by the committee  
22 and the futures rep but I believe --  
23 my best memory is that plan was filed  
24 before there was agreement between

1 see whether points that you were  
2 making were of sufficient validity to  
3 cause us to consider changes in the  
4 TDP. Some of those points were so  
5 considered and resulted in changes in  
6 the TDP that evolved in the spring  
7 and summer of 2008 and are reflected  
8 in the plan as filed.

9 There were also comments to the  
10 TDP that were received from other  
11 parties who had an interest and a  
12 right to consider the documents. I'm  
13 mindful of the representatives that  
14 counsel for Sealed Air participated  
15 in some parts of the TDP and trust  
16 agreement and there may have been  
17 comments as well from the debtor.  
18 I'm not -- I don't recall. But the  
19 effect of all of that was it was --  
20 the result of all of that was the TDP  
21 that is now your Exhibit 4. That's  
22 the general history of its evolution.

23 **Q. Let's turn to Section**  
24 **5.3(b)(3) of the TDP at pages 31 and**

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1 into two parts. The first part is  
2 the greater of the trust's last offer  
3 to the claimant or the award that the  
4 claimant declined in non-binding  
5 arbitration. That's what it says the  
6 first part is. However, that amount  
7 should not exceed the amount that the  
8 jury decides.

9 Now, the balance, it says, gets  
10 divided into five equal installments  
11 in years 6 through 10 following the  
12 year of the initial payment, all of  
13 that again subject to the applicable  
14 payment percentage, the maximum  
15 available payment and the claims  
16 payment ratio provisions. So that's  
17 how it gets paid out. And it doesn't  
18 get any sequencing adjustments.

19 **Q. And is it subject to**  
20 **maximum value or is it --**

21 A. Yes, and it's subject to  
22 the maximum values.

23 **Q. So that the amount of**  
24 **the trust's last offer or the**

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1 pending question.)

2 MR. FINCH: Object to  
3 form.

4 A. No. It's the amount  
5 between whatever the award was and  
6 what was paid, limited by the maximum  
7 value.

8 **Q. Right. So --**

9 A. Could be less.

10 **Q. That's a very fair**  
11 **point. So let's assume that the jury**  
12 **verdict is in excess of the --**

13 A. Then it would be the  
14 difference between the maximum --

15 **Q. -- maximum value.**

16 A. -- value and what was  
17 already paid.

18 **Q. And when we say "maximum**  
19 **value", to Mr. Finch's point --**

20 A. Yeah.

21 **Q. -- we are including --**  
22 **that is the greater of the maximum**  
23 **value set forth in the matrix or the**  
24 **scheduled value multiplied by the**

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1 **non-binding arbitration award --**

2 A. Yes.

3 **Q. -- assuming that they --**  
4 **that the jury verdict is not less**  
5 **than those amounts --**

6 A. Yes.

7 **Q. -- will get paid on the**  
8 **same basis as though the claim had**  
9 **been allowed -- excuse me --**  
10 **liquidated upon expedited review?**

11 A. That's what it seems to  
12 say.

13 **Q. The next traunch, if you**  
14 **will, of the jury verdict is the**  
15 **amount between that initial payment**  
16 **and the maximum value for the claim.**  
17 **Is that correct?**

18 MR. FINCH: Object to  
19 form. Maximum value or maximum  
20 extraordinary value as the case  
21 may be.

22 THE WITNESS: Could I  
23 have the question back?

24 (The reporter reads the

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1 **extraordinary claims multiplier if**  
2 **the claim is an extraordinary**  
3 **claim?**

4 A. Well, maximum value is a  
5 defined term. It's a defined term  
6 with respect to extraordinary claims  
7 too.

8 **Q. And then to the extent**  
9 **that there is remaining value to the**  
10 **jury verdict over and above those two**  
11 **tranches that we spoke about, how**  
12 **does that get paid?**

13 A. It doesn't.

14 **Q. I just want to make sure**  
15 **I understand your testimony a few**  
16 **minutes ago. Did I hear you**  
17 **correctly that, to your knowledge, no**  
18 **claimant has ever exercised the right**  
19 **to pursue its claim in the tort**  
20 **system under one of these standard**  
21 **form TDPs?**

22 A. That's my best  
23 recollection.

24 **Q. And you would most**

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1 **likely have been aware if such an**  
 2 **event had taken place?**

3 A. I think so, but I can't  
 4 be sure of that.

5 **Q. All right. Let's talk**  
 6 **about the extraordinary claims**  
 7 **multiplier under Section 5.4(a).**

8 A. Yes.

9 MR. J. COHN: I'm sorry,  
 10 Dan. Where are you?

11 MR. COHN: Section  
 12 5.4(a) in the TDP.

13 MR. FINCH: Page 32.

14 **Q. Now, is it fair to say**  
 15 **that to obtain liquidation of a claim**  
 16 **as an extraordinary claim a claimant**  
 17 **must meet two criteria, one having to**  
 18 **do with exposure and one having to do**  
 19 **with little likelihood of a**  
 20 **substantial recovery elsewhere?**

21 A. I don't know whether  
 22 it's fair to say that. I think  
 23 that's correct.

24 **Q. Now, focusing first on**

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1 **the exposure criteria, how do these**  
 2 **vary from standard form TDPs that**  
 3 **we've been referring to?**

4 A. The variance is the  
 5 additional provision toward the  
 6 bottom of the runover paragraph on  
 7 page 33 that provides for an  
 8 additional category where the  
 9 exposure was 95 percent the result of  
 10 exposure to Grace products.

11 **Q. So under the standard**  
 12 **form of TDP, there is an**  
 13 **extraordinary claim treatment for**  
 14 **exposures that are 75 percent the**  
 15 **result of the debtor's asbestos?**

16 A. Correct.

17 **Q. And those provide a five**  
 18 **times multiplier for such claims?**

19 A. That's correct.

20 **Q. And here the change is**  
 21 **that there's an eight times**  
 22 **multiplier for exposures of 95**  
 23 **percent?**

24 A. That's correct.

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1 **Q. How did this change come**  
 2 **about?**

3 A. Based upon discussions  
 4 that I and members of the committee  
 5 had with you and Mr. Heberling, the  
 6 idea was that, as distinguished from  
 7 the usual situation where asbestos  
 8 claimants were generally exposed to  
 9 more than one defendant's product, it  
 10 would be the case in Libby or for  
 11 people exposed in Libby that there  
 12 would be only exposure to Grace's  
 13 product and, thus, that was a little  
 14 different from what was normally  
 15 provided.

16 To put in context what the  
 17 extraordinary claims provision is  
 18 trying to accomplish, as you know,  
 19 the scheduled values or even the  
 20 individual review values are meant to  
 21 reflect the respective defendants'  
 22 share of the responsibility for the  
 23 claim as kind of evidenced  
 24 historically by what the defendant

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1 had paid to settle claims.

2 In most jurisdiction, the  
 3 defendant, which would be Grace here  
 4 but it could be any of the others,  
 5 would be jointly and severally liable  
 6 with others for the tort  
 7 responsibility and, thus, if the case  
 8 went to verdict, they would be a  
 9 single recovery, a single amount, and  
 10 any one of the jointly and severally  
 11 responsible tort feorsors would have  
 12 to pay that if called upon to pay  
 13 that. And that would develop into,  
 14 under the state law, rules that would  
 15 involve contribution or things like  
 16 that among joint tort feorsors.

17 The TDP is designed to provide  
 18 for an award in the normal case where  
 19 there are multiplicity of available  
 20 defendants of that defendant's  
 21 respective share. When we first  
 22 worked with this concept, which I  
 23 believe goes back to the original  
 24 Manville, maybe even the Manville

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1 defendant would have specific  
2 liability to the particular claimant  
3 because of the exposure to the  
4 particular product which was caused  
5 in part by this defendant even if  
6 they didn't manufacture it.

7 MR. SPEIGHTS: Thank  
8 you, sir.

9 THE WITNESS: Next?

10 MR. FINCH: Lunch break?  
11 (Off the record.)  
12

13 EXAMINATION BY  
14 MR. BROWN:

15 Q. Good afternoon, Mr.  
16 Inselbuch. Michael Brown. I  
17 represent Geico, Republic Insurance  
18 Company, Seaton Insurance Company  
19 and OneBeacon America Insurance  
20 Company.  
21

22 A. How fortunate for you.

23 Q. I want to follow up on  
24 some of Mr. Cohn's questioning of you  
earlier this morning and I think --

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1 I'm not sure I followed all of the  
2 exhibits but I believe Exhibit 2A is  
3 the term sheet, at least your copy of  
4 the term sheet, the one you were  
5 familiar with. Is that correct?  
6

7 A. Yes, sir. It's the one  
I signed.

8 Q. Okay. Do you have that  
9 in front of you?

10 A. I do.

11 Q. Okay. I'm correct, am I  
12 not, that it's dated April 6, 2008?

13 A. That's correct.

14 Q. And you executed it on  
15 behalf of the official committee of  
16 asbestos personal injury claimants,  
17 otherwise known as the committee, or  
18 the ACC, correct?

19 A. That's correct.

20 Q. Okay. You indicated  
21 earlier in response to one of Mr.  
22 Cohn's questions that the ACC had a  
23 negotiating subcommittee and I  
24 understood you to be saying that that

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1 was a subcommittee in connection with  
2 the negotiations leading to the term  
3 sheet. Is that correct?

4 A. That's correct.

5 Q. Okay. And those  
6 individuals were Joe Rice, Perry  
7 Weitz, John Cooney and Fred Baron  
8 and/or Russell Budd. Am I correct?

9 A. No, not Fred, no. Steve  
10 Baron --

11 Q. Steve Baron. I'm sorry.

12 A. -- and/or Russell

13 Budd.

14 Q. All right. Am I correct  
15 that counsel for the ACC was also  
16 involved in those negotiations?

17 A. Correct.

18 Q. And would that be you  
19 and Mr. Lockwood?

20 A. It would certainly be  
21 me. I don't recall whether Lockwood  
22 was there for some or all of that.

23 Q. Okay. Did the other  
24 parties that ultimately became the

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1 plan proponents -- did they also have  
2 negotiating teams?

3 A. The debtor certainly  
4 did, the futures claimants certainly  
5 did, the equity security holder  
6 certainly did, yes.

7 Q. Okay. Can you identify  
8 the debtor's negotiating team?

9 A. Their chairman was  
10 there, their general counsel was  
11 there, their chief financial officer  
12 was there, Mr. Bernick was there, the  
13 chief legal officer was there. There  
14 may have been others but those are  
15 the people I remember.

16 Q. Okay. The chairman was  
17 Mr. Festa?

18 A. Yes, sir.

19 Q. And the general counsel  
20 was Mr. Shelnitz?

21 A. Yes, sir.

22 Q. And the CFO was Mr.  
23 LaForce?

24 A. I don't recall his



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1 name.

2 **Q. Okay. Who was the chief**  
3 **legal officer?**

4 A. That would have been Mr.  
5 Shelnitz.

6 **Q. Okay. And who was the**  
7 **negotiating team for the FCR?**

8 A. Mr. Frankel, at some  
9 points David Austern I believe was  
10 there. There may have been others.

11 **Q. You don't recall them?**

12 A. I don't recall now.

13 **Q. Okay. And how about the**  
14 **equity committee?**

15 A. Mr. Weschler.

16 **Q. Is that it?**

17 A. As far as I recall.

18 **Q. Now, other than the four**  
19 **parties that ultimately signed the**  
20 **term sheet, were there any other**  
21 **parties or entities or individuals**  
22 **that were involved in the**  
23 **negotiations leading up to the April**  
24 **6, 2008 term sheet?**

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1 MR. FINCH: Object to  
2 form.

3 A. Not that I recall.

4 **Q. Were any of the debtor's**  
5 **insurers involved in the negotiations**  
6 **that resulted in the term sheet?**

7 A. None that I attended.

8 **Q. To your knowledge, were**  
9 **any of them asked or invited to**  
10 **participate in the negotiations that**  
11 **led up to the term sheet?**

12 MR. FINCH: Objection,  
13 lack of foundation.

14 A. I don't know.

15 **Q. Were you ever advised by**  
16 **any other party to the negotiations**  
17 **that they did not want the insurers**  
18 **to participate in the negotiations?**

19 MS. BAER: Objection.

20 A. No.

21 **Q. Did any other party to**  
22 **the negotiations suggest that they**  
23 **did want the insurers involved in the**  
24 **negotiations?**

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1 A. Not that I recall.

2 **Q. All right. I think you**  
3 **testified earlier this morning that**  
4 **after the term sheet -- Well, let me**  
5 **back up.**

6 **You indicated in your earlier**  
7 **testimony, I believe, that Anne**  
8 **McMillan from your office prepared**  
9 **the initial draft of the TDP. Is**  
10 **that correct?**

11 A. I said it may have been  
12 Anne McMillan.

13 **Q. Okay. Do you know**  
14 **whether whoever created it -- well,**  
15 **let me back up.**

16 **Was it someone from Caplin &**  
17 **Drysdale that created the initial**  
18 **draft?**

19 A. Correct.

20 **Q. Do you know whether that**  
21 **draft still exists today?**

22 A. No.

23 **Q. Do you know what**  
24 **model -- I think I heard the term**

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1 **earlier in your testimony that there**  
2 **was a model that was used.**

3 **Do you know what model was used**  
4 **to create the first draft of the**  
5 **TDP?**

6 A. My ex -- I don't know  
7 the answer. My expectation would be  
8 that she or someone else in the firm  
9 would have started with the  
10 then-most-recent rendition of the TDP  
11 sometime in 2007 that had been  
12 approved either by a committee in  
13 some other bankruptcy or in court and  
14 used that as the beginning place to  
15 start. I don't recall what that  
16 might have been.

17 **Q. Okay. Now, you**  
18 **indicated that that initial draft was**  
19 **created by your office in the fall of**  
20 **two thousand --**

21 A. Two thousand --

22 **Q. Sorry -- in the fall of**  
23 **2007 for consideration by the**  
24 **committee.**

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<p>1 A. I think that's</p> <p>2 correct.</p> <p>3 <b>Q. Is that right?</b></p> <p>4 A. I believe that's</p> <p>5 correct.</p> <p>6 <b>Q. And that was after your</b></p> <p>7 <b>office had received input from Mark</b></p> <p>8 <b>Peterson on the draft, as I</b></p> <p>9 <b>understood your earlier testimony?</b></p> <p>10 A. No, before.</p> <p>11 <b>Q. Okay.</b></p> <p>12 A. The draft would have had</p> <p>13 blanks for all of the numbers and for</p> <p>14 the payment percentage.</p> <p>15 <b>Q. Okay. Did it go to Mark</b></p> <p>16 <b>Peterson first or did it go to your</b></p> <p>17 <b>client first?</b></p> <p>18 A. I don't recall. It</p> <p>19 certainly would not have gone to</p> <p>20 Peterson first. It might have gone</p> <p>21 to him simultaneously.</p> <p>22 <b>Q. And Mr. Peterson, I</b></p> <p>23 <b>gather, provided you with his</b></p> <p>24 <b>comments?</b></p>	<p>1 alternate recommendations based upon</p> <p>2 different concepts. He sometimes</p> <p>3 provides them with ranges of</p> <p>4 recommendations for them to</p> <p>5 consider.</p> <p>6 <b>Q. Okay. You indicated</b></p> <p>7 <b>earlier that in or around early 2008</b></p> <p>8 <b>that the committee shared its then</b></p> <p>9 <b>working draft of the TDP with the</b></p> <p>10 <b>FCR. Do I have that correct?</b></p> <p>11 A. I think that timing is</p> <p>12 correct but I'm not sure. It could</p> <p>13 have been a little earlier than</p> <p>14 that.</p> <p>15 <b>Q. And had there been a</b></p> <p>16 <b>plan filed, a joint plan, proposed</b></p> <p>17 <b>plan, by the ACC and FCR at that</b></p> <p>18 <b>point?</b></p> <p>19 A. That's my</p> <p>20 recollection.</p> <p>21 <b>Q. All right. You then</b></p> <p>22 <b>indicated that the -- the plan I</b></p> <p>23 <b>suppose you were talking about was</b></p> <p>24 <b>superseded by events was, I think,</b></p>
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<p>1 A. Provided the committee</p> <p>2 with his thoughts, yes.</p> <p>3 <b>Q. Okay. And what were the</b></p> <p>4 <b>nature of his thoughts or comments on</b></p> <p>5 <b>the draft that was provided to him?</b></p> <p>6 A. He doesn't comment on</p> <p>7 the draft. He provides</p> <p>8 information --</p> <p>9 <b>Q. What does he comment</b></p> <p>10 <b>on?</b></p> <p>11 A. He doesn't comment. He</p> <p>12 provides information that will</p> <p>13 facilitate the committee's decisions</p> <p>14 as to what figures to place in the</p> <p>15 matrix and also to deal with the --</p> <p>16 just a second. I've got to get the</p> <p>17 right word for you -- the claims</p> <p>18 payment ratio.</p> <p>19 <b>Q. Does he actually provide</b></p> <p>20 <b>the committee with figures for the</b></p> <p>21 <b>matrix?</b></p> <p>22 A. He does. He provides</p> <p>23 his recommendations, he provides them</p> <p>24 with considered -- sometimes with</p>	<p>1 <b>the term that you've used and that's</b></p> <p>2 <b>what ultimately led up to the term</b></p> <p>3 <b>sheet. What events were you alluding</b></p> <p>4 <b>to?</b></p> <p>5 A. Well, soon thereafter we</p> <p>6 began the estimation hearings and in</p> <p>7 the course of the estimation hearings</p> <p>8 what the -- the negotiations that led</p> <p>9 to the term sheet began. And once</p> <p>10 there was agreement on the term sheet</p> <p>11 with the debtor, there was no need to</p> <p>12 pursue the separate plan that the</p> <p>13 committee and the futures rep had</p> <p>14 filed because we would be pursuing a</p> <p>15 plan with the debtor and the equity</p> <p>16 committee.</p> <p>17 <b>Q. When did the estimation</b></p> <p>18 <b>hearing begin?</b></p> <p>19 A. I don't recall offhand,</p> <p>20 but my best guess would be sometime</p> <p>21 in March of 2008.</p> <p>22 THE WITNESS: Earlier</p> <p>23 than that?</p> <p>24 A. Well, I've got that</p>



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1 wrong. I'm told I got that wrong.  
2 It was earlier in 2008.

3 **Q. You indicated also that**  
4 **at some point -- it wasn't clear to**  
5 **me when in this process -- the draft**  
6 **TDP was shared with Sealed Air. Can**  
7 **you tell me when that was?**

8 A. It would have been later  
9 on, after there was pretty much a  
10 draft of plan documents because they  
11 didn't just see the TDP; they saw a  
12 whole bunch of plan documents to  
13 provide their comments. I can't give  
14 you a date, but it would have been in  
15 2008 at some point.

16 **Q. Would it have been after**  
17 **the term sheet was signed but before**  
18 **the initial plan documents were filed**  
19 **in September of 2008?**

20 A. I don't recall.

21 **Q. Do you have an**  
22 **understanding as to why Sealed Air**  
23 **had an interest in the TDPs?**

24 A. There was a settlement

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1 agreement with Sealed Air and  
2 Fresenius under which they would pay  
3 considerable sums that would be  
4 available to compensate some of the  
5 claimants here. And under the terms  
6 of that settlement agreements, there  
7 were requirements that had to be  
8 accomplished in order to trigger  
9 their obligation to pay the monies.  
10 Some of those obligations involved  
11 protections and language in plans --  
12 in a plan of reorganization for their  
13 benefit.

14 **Q. At the time that the**  
15 **TDPs were shared with Sealed Air for**  
16 **their review, were they also shared**  
17 **with the debtor's insurers for the**  
18 **debtor's insurers' review?**

19 A. I have no idea.

20 **Q. Let me shift gears for a**  
21 **moment because I gather Mr. Cohn is**  
22 **not back with the copies.**

23 MR. J. COHN: I am.

24 MR. BROWN: Oh, you

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1 are.

2 MR. J. COHN: Yes.

3 MR. BROWN: Do you want  
4 to, I guess, give the witness  
5 the one-page bio first?

6 MR. J. COHN: Sure.

7 (Biography page of Elihu  
8 Inselbuch marked for  
9 identification as Inselbuch  
10 Exhibit 5.)

11 **Q. Mr. Inselbuch, you**  
12 **should have before you a one-page**  
13 **document that I'm going to bet that**  
14 **you don't have any trouble**  
15 **identifying but I'll ask the question**  
16 **anyway. Can you identify it?**

17 A. It's a biography of me  
18 that is, I believe, put together by  
19 my firm and is either on the website  
20 or in other material where the firm  
21 collects a rogues gallery of its  
22 lawyers.

23 **Q. I will represent to you**  
24 **that I pulled it off your website.**

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1 **In the second paragraph there**  
2 **are a number of cases that are**  
3 **referenced --**

4 A. Yes.

5 **Q. -- some of which you**  
6 **have mentioned earlier in your**  
7 **testimony today, and what I want to**  
8 **ask you about each of those cases is**  
9 **whether Mark Peterson was involved in**  
10 **those cases. So can you run down the**  
11 **list that is in the bio and tell me,**  
12 **one, whether Mark Peterson was**  
13 **involved and, two, as to each what**  
14 **his role was?**

15 A. Okay.

16 MR. FINCH: Object to  
17 form. You can answer.

18 THE WITNESS: I can  
19 answer this?

20 MR. FINCH: Yes.

21 A. The best I can do, let's  
22 see. Johns-Manville, he was not  
23 involved in the original bankruptcy  
24 proceeding. In the restructuring

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1 throughout the country, how  
2 information might be made available  
3 to the trust, how the process can be  
4 made less cumbersome, things like  
5 that.

6 **Q. Are the members of the**  
7 **plaintiffs' asbestos bar the only**  
8 **ones that have that knowledge?**

9 A. In that detail, yes.

10 **Q. There's no defense**  
11 **attorneys in asbestos litigation that**  
12 **would have that knowledge?**

13 A. No, not all of it. Very  
14 little of it. The defense attorneys  
15 will be familiar with what's in their  
16 files and what they do.

17 **Q. And how does that**  
18 **differ --**

19 MR. FINCH: Object to  
20 form.

21 **Q. -- from what the**  
22 **plaintiffs' asbestos attorneys do?**

23 A. It's like day and  
24 night.

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1 **Q. In your experience with**  
2 **other asbestos trusts, does the trust**  
3 **agreements provide that the trustees**  
4 **will be required to consult with the**  
5 **TAC members on various issues?**

6 A. The documents say what  
7 they say. They often call for  
8 consultation on specific issues.

9 **Q. And do they often also**  
10 **call for the trustees to obtain the**  
11 **consent of the TAC and the future**  
12 **claimants' representative before**  
13 **certain actions can be taken?**

14 A. Yes. And failing that  
15 consent, there are provisions for  
16 overriding the refusal of consent.

17 **Q. What is the necessity of**  
18 **having these consent provisions in**  
19 **the trust agreement?**

20 MR. FINCH: Object to  
21 form.

22 A. So that as -- as the  
23 trust is administered, it will be  
24 administered in a way that is

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1 consistent with the expectations of  
2 the constituencies that care about  
3 it.

4 **Q. And the only**  
5 **constituencies that care about it, I**  
6 **gather, are the asbestos claimants?**

7 A. And the futures  
8 representative.

9 **Q. Do the insurers have any**  
10 **interest in it?**

11 A. The insurers have an  
12 interest in what they're required to  
13 pay. What they're required to pay is  
14 defined by their contracts.

15 MR. BROWN: All right.

16 I think, Mr. Inselbuch, that  
17 may be all I have. I'll pass  
18 to the next questioner.

19 MR. J. COHN: I'll  
20 follow up. I think it makes  
21 sense.  
22

23 EXAMINATION BY  
24 MR. J. COHN:

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1 **Q. Mr. Inselbuch, Jacob**  
2 **Cohn for Federal Insurance Company.**

3 **If we could go to the TDPs for**  
4 **a moment, Exhibit --**

5 A. I'd ask you to speak a  
6 little louder --

7 **Q. Sure. You know what?**  
8 **Why don't I come down there?**

9 A. -- because you're  
10 talking in my bad ear.

11 **Q. All right. You have**  
12 **the --**

13 A. I have the TDP.

14 **Q. -- TDPs. If you take a**  
15 **look at page 31, the end of**  
16 **5.3(b)(1)(B) --**

17 A. Yeah.

18 **Q. -- it's the paragraph**  
19 **above the scheduled value**  
20 **paragraph --**

21 A. Yes.

22 **Q. -- beginning provision.**

23 A. Yes.

24 **Q. It has a reference to**

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<p>1 <b>choice of law.</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. And it says -- there's a</b></p> <p>4 <b>reference to the Alabama wrongful</b></p> <p>5 <b>death statute and there's a reference</b></p> <p>6 <b>to "shall only govern the rights</b></p> <p>7 <b>between the PI trust and the</b></p> <p>8 <b>claimant, and, to the extent the PI</b></p> <p>9 <b>trust seeks recovery from any entity</b></p> <p>10 <b>that provided insurance coverage to</b></p> <p>11 <b>Grace, the Alabama wrongful death</b></p> <p>12 <b>statute shall govern."</b></p> <p>13 A. Uh-huh.</p> <p>14 <b>Q. Are you familiar with</b></p> <p>15 <b>that provision?</b></p> <p>16 A. I see it.</p> <p>17 <b>Q. What is the purpose of</b></p> <p>18 <b>that provision?</b></p> <p>19 A. Which part of it?</p> <p>20 <b>Q. The part that applies --</b></p> <p>21 <b>at least purports to apply a rule to</b></p> <p>22 <b>insurer disputes.</b></p> <p>23 MR. FINCH: Object to</p> <p>24 form.</p>	<p>1 Whether or not this provision,</p> <p>2 as it states, also will govern the</p> <p>3 relationship with insurers is</p> <p>4 something that I guess the insurers</p> <p>5 can debate at some point in court.</p> <p>6 <b>Q. Is this, therefore,</b></p> <p>7 <b>intended to be a carve-out from the</b></p> <p>8 <b>insurer neutrality provision of the</b></p> <p>9 <b>plan?</b></p> <p>10 MR. FINCH: Object to</p> <p>11 form, lack of foundation.</p> <p>12 (The witness reviews the</p> <p>13 document.)</p> <p>14 A. I don't know the answer</p> <p>15 to that.</p> <p>16 <b>Q. You are familiar with</b></p> <p>17 <b>the insurance neutrality provision of</b></p> <p>18 <b>the plan?</b></p> <p>19 A. Only very generally.</p> <p>20 <b>Q. Would reviewing that</b></p> <p>21 <b>give you any help in answering this</b></p> <p>22 <b>question?</b></p> <p>23 A. No. That's something</p> <p>24 you ought to ask Mr. Lockwood.</p>
Page 227	Page 229
<p>1 (The witness reviews the</p> <p>2 document.)</p> <p>3 A. The point of this whole</p> <p>4 provision was to ameliorate a problem</p> <p>5 that existed under the law of</p> <p>6 Alabama. As you know, under the</p> <p>7 terms of the TDP, no punitive damages</p> <p>8 are included in the recovery. As</p> <p>9 this was all explained to me at the</p> <p>10 time, in Alabama the recovery for</p> <p>11 wrongful death is couched in terms of</p> <p>12 punitive damages. So that, read</p> <p>13 literally, there could be no recovery</p> <p>14 under this document for a wrongful</p> <p>15 death that would have as its</p> <p>16 operative jurisdiction the State of</p> <p>17 Alabama.</p> <p>18 This provision was inserted to</p> <p>19 cure that problem, to make it</p> <p>20 possible for what we would all --</p> <p>21 what we all regarded as</p> <p>22 run-of-the-mill ordinary death claims</p> <p>23 that happened to occur in Alabama to</p> <p>24 recover under the terms of the trust.</p>	<p>1 <b>Q. You've represented</b></p> <p>2 <b>numerous what have come to be known</b></p> <p>3 <b>as asbestos creditors committees, or</b></p> <p>4 <b>ACCs, correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And as counsel you are</b></p> <p>7 <b>representing the members of that</b></p> <p>8 <b>committee, correct?</b></p> <p>9 MR. FINCH: Object to</p> <p>10 form.</p> <p>11 A. Yes.</p> <p>12 <b>Q. And those members have</b></p> <p>13 <b>fiduciary duties; is that correct?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. To whom do those</b></p> <p>16 <b>fiduciary duties run?</b></p> <p>17 A. The entire</p> <p>18 constituency.</p> <p>19 <b>Q. Who is the</b></p> <p>20 <b>constituency?</b></p> <p>21 A. All asbestos claimants</p> <p>22 against the particular debtor.</p> <p>23 <b>Q. Irrespective of the</b></p> <p>24 <b>validity of their claims; is that</b></p>

Page 230	Page 232
<p>1 <b>correct?</b></p> <p>2 MR. FINCH: Object to</p> <p>3 form.</p> <p>4 A. Well, when I say "a</p> <p>5 claimant", I presuppose that they</p> <p>6 have a claim.</p> <p>7 <b>Q. So you operate on the</b></p> <p>8 <b>assumption, is it correct, that</b></p> <p>9 <b>somebody that is represented by a</b></p> <p>10 <b>lawyer that is asserting a claim has</b></p> <p>11 <b>a valid claim against that particular</b></p> <p>12 <b>debtor?</b></p> <p>13 A. No. You asked me to</p> <p>14 whom did the fiduciary duty extend.</p> <p>15 It extends to those folks who have</p> <p>16 claims.</p> <p>17 <b>Q. Is there a fiduciary</b></p> <p>18 <b>duty of the committee to attempt to</b></p> <p>19 <b>ferret out those people who have come</b></p> <p>20 <b>before the Bankruptcy Court but do</b></p> <p>21 <b>not have meritorious claims?</b></p> <p>22 A. No. The committee's</p> <p>23 duty is to participate in the</p> <p>24 preparation of a TDP and a plan that</p>	<p>1 A. Yet-to-come claimants.</p> <p>2 <b>Q. -- yet-to-come</b></p> <p>3 <b>claimants?</b></p> <p>4 A. But he also is</p> <p>5 interested in seeing to it that as</p> <p>6 much money as possible goes in the</p> <p>7 pot.</p> <p>8 <b>Q. They have a common</b></p> <p>9 <b>interest in maximizing the size of</b></p> <p>10 <b>the pot, correct?</b></p> <p>11 A. I believe so.</p> <p>12 <b>Q. And it is therefore in</b></p> <p>13 <b>the interest of the asbestos</b></p> <p>14 <b>creditors committee and the FCR to</b></p> <p>15 <b>see as much insurance money paid into</b></p> <p>16 <b>that pot as quickly as possible,</b></p> <p>17 <b>correct?</b></p> <p>18 A. Sure.</p> <p>19 <b>Q. And when the trust is</b></p> <p>20 <b>established, the trust owes a</b></p> <p>21 <b>fiduciary duty to its beneficiaries,</b></p> <p>22 <b>correct?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. And --</b></p>
Page 231	Page 233
<p>1 will, as best possible, pay claims</p> <p>2 that are valid and in as an efficient</p> <p>3 manner as possible.</p> <p>4 <b>Q. And as representatives</b></p> <p>5 <b>of existing claimants, the ACC wants</b></p> <p>6 <b>to get as much money as possible for</b></p> <p>7 <b>the existing claimants, correct?</b></p> <p>8 A. First of all, the ACC</p> <p>9 are the victims who are appointed to</p> <p>10 the committee. You seem to be</p> <p>11 fudging over talking about their</p> <p>12 lawyers.</p> <p>13 <b>Q. I don't think that I am,</b></p> <p>14 <b>but please --</b></p> <p>15 A. Okay. I'm talking about</p> <p>16 the claimants. Surely, their job is</p> <p>17 to see in the debates among the</p> <p>18 various creditor constituencies how</p> <p>19 much of the pie that's available to</p> <p>20 all creditors can be allocated to</p> <p>21 asbestos claimants.</p> <p>22 <b>Q. Okay. And the FCR has a</b></p> <p>23 <b>different constituency. Those</b></p> <p>24 <b>are --</b></p>	<p>1 A. The trustees do.</p> <p>2 <b>Q. The trustees.</b></p> <p>3 <b>And the beneficiaries of the</b></p> <p>4 <b>trust --</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. -- are existing and</b></p> <p>7 <b>future claimants against that debtor</b></p> <p>8 <b>who's established a trust, correct?</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. And the trust has a</b></p> <p>11 <b>fiduciary duty to maximize the</b></p> <p>12 <b>compensation to its beneficiaries,</b></p> <p>13 <b>correct?</b></p> <p>14 MR. FINCH: Object to</p> <p>15 form. Mischaracterizes the</p> <p>16 document.</p> <p>17 A. Sure.</p> <p>18 <b>Q. And the main issue</b></p> <p>19 <b>between the current claimants and the</b></p> <p>20 <b>future claimants is ensuring that</b></p> <p>21 <b>enough money is available going out</b></p> <p>22 <b>in time to assure as much as possible</b></p> <p>23 <b>the non-preferential treatment of</b></p> <p>24 <b>each claim. Is that correct?</b></p>

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1 A. You could -- that's  
2 fair. That's a fair way to put it.

3 Q. And the trust,  
4 similarly, shares an interest in  
5 getting as much money into the trust  
6 from whatever source as quickly as  
7 possible. Is that correct?

8 MR. FINCH: Object to  
9 form.

10 A. Yes. The trustees also  
11 have a fiduciary responsibility in  
12 addition to the futures rep to see to  
13 it that all claimants that come  
14 before the trust are treated more or  
15 less equitably.

16 Q. Do the trustees have any  
17 duty at all to the insurers?

18 A. As insurers?

19 Q. Yes.

20 A. Not that I can think  
21 of.

22 Q. In fact, with respect to  
23 the insurance relationship, typically  
24 insurers are in an adversarial

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1 position with the trust, correct?

2 A. Yes.

3 Q. You've been involved, as  
4 you said, as counsel for what we  
5 could colloquially call the Manville  
6 TAC, correct?

7 A. Correct, yes. Still  
8 am.

9 Q. Are you familiar with  
10 the Manville trust's having issued  
11 pronouncements that it will no longer  
12 honor claims that are submitted based  
13 upon the diagnosis of certain doctors  
14 whose reliability has been called  
15 into question?

16 A. I am.

17 Q. Would you take a look at  
18 page 40 of the TDPs, please,  
19 5.7(a)(2), regarding the credibility  
20 of medical evidence?

21 A. Yes.

22 Q. There's no reference to  
23 the doctors who have been  
24 discredited -- strike that.

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1 There's no reference in these  
2 TDPs to the doctors who the Manville  
3 trust will no longer consider paying  
4 claims based upon their diagnosis, is  
5 there?

6 A. That's correct.

7 Q. Do you know why those  
8 doctors are not identified here?

9 A. Because it's for the  
10 trustees to decide whether or not  
11 they will list one or another  
12 facility as being a facility whose  
13 evidence they will not credit.

14 Q. And the trustees are  
15 supposed to consult with TAC members  
16 about that; is that correct?

17 MR. FINCH: Object to  
18 form.

19 A. Not necessarily.

20 Q. In Manville, is there a  
21 cap on the contingent fee that  
22 plaintiffs' attorneys can recover?

23 A. There is.

24 Q. And that is how much?

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1 A. 25 percent.

2 Q. Is the rationale for  
3 that because it's a lot easier to  
4 recover from a trust than it is to  
5 recover from a defendant in the tort  
6 system?

7 A. No.

8 MR. FINCH: Objection.

9 Q. Is there a rationale for  
10 that?

11 A. Jack Weinstein insisted  
12 on it.

13 Q. To your knowledge, has  
14 any trust, other than the one that  
15 the judge insisted upon imposing a  
16 fee cap, ever imposed a contingent  
17 fee cap on the recovery of  
18 plaintiffs' attorneys?

19 A. No. And remember that  
20 Weinstein was sitting over the  
21 question of the fairness of a class  
22 action settlement. He was not  
23 sitting as a bankruptcy judge.

24 Q. Is that fair to say that



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1 **you were the most responsible --**  
 2 **sorry -- the ACC is the most**  
 3 **responsible for preparing the TDPs;**  
 4 **is that right?**

5 MR. FINCH: Object to  
 6 form.

7 A. As among what group?

8 **Q. Well --**

9 A. We were more responsible  
 10 than the New York City Police  
 11 Department.

12 **Q. Well, in the course of**  
 13 **negotiating TDPs and plans generally**  
 14 **when you are representing --**

15 A. Yes.

16 **Q. -- ACCs, is it typical**  
 17 **for the ACC's counsel to draft the**  
 18 **first draft?**

19 A. Of the TDP?

20 **Q. Yes.**

21 A. Yes.

22 **Q. And then it's typical**  
 23 **that the FCR would do further comment**  
 24 **on it?**

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1 A. Have to, yes.

2 **Q. Is it fair to say that**  
 3 **the FCR and the ACC are the**  
 4 **constituencies that are most**  
 5 **concerned with the contents of a**  
 6 **TDP?**

7 MR. FINCH: Object to  
 8 form.

9 A. Yes.

10 **Q. Is it fair to say that**  
 11 **once a debtor has cut an economic**  
 12 **deal with the asbestos constituencies**  
 13 **that its interest in the TDPs are**  
 14 **primarily to ensure that they will**  
 15 **garner the necessary supermajority**  
 16 **vote and comply with 524g so that a**  
 17 **plan could be confirmed?**

18 MR. FINCH: Object to  
 19 form.

20 MS. BAER: Objection.  
 21 Objection to form, lack of  
 22 foundation.

23 A. You'd have to ask  
 24 them.

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1 **Q. Is that your experience,**  
 2 **however?**

3 MS. BAER: Objection.

4 MR. FINCH: Object to  
 5 form, foundation.

6 A. I don't read their  
 7 minds.

8 **Q. Typically, is the**  
 9 **involvement of debtors in such**  
 10 **situations in the negotiation of TDPs**  
 11 **limited to the issues that I've just**  
 12 **mentioned?**

13 MS. BAER: Objection.

14 MR. FINCH: Object to  
 15 form.

16 MS. BAER: Form,  
 17 foundation.

18 A. No, no. The debtors  
 19 have an interest in dealing with  
 20 objectors that might have objections  
 21 to the TDP and they'll address those  
 22 issues with us and with the futures  
 23 rep, and it would depend on the  
 24 particular case.

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1 MR. J. COHN: I pass the  
 2 witness. Thank you.

3 THE WITNESS: Anybody  
 4 else?

5 MR. FINCH: Anybody  
 6 else?

7  
 8 EXAMINATION BY  
 9 MS. ABRAVANEL:

10 **Q. Mr. Inselbuch, my name**  
 11 **is Karen Abravanel. I'm from Simpson**  
 12 **Thacher and I represent Travelers**  
 13 **Casualty & Surety.**

14 **You said that you haven't**  
 15 **reviewed any of the insurance**  
 16 **policies at issue in these**  
 17 **procedures. Is that right?**

18 A. That's my best  
 19 recollection.

20 **Q. Have you reviewed any of**  
 21 **the settlement agreements entered**  
 22 **into between Grace and its insurers**  
 23 **pre-petition?**

24 A. I do not believe so.

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<p>1 <b>claim?</b></p> <p>2 MR. FINCH: Objection.</p> <p>3 Form, foundation, calls for</p> <p>4 speculation, hypothetical.</p> <p>5 A. As a general</p> <p>6 proposition, an indirect claimant</p> <p>7 steps into the shoes of the claimant</p> <p>8 because the basis for the indirect</p> <p>9 claim is that he have absolved the</p> <p>10 trust from the direct claimant's</p> <p>11 claim. So they could step into the</p> <p>12 shoes of the claimant, they could</p> <p>13 proceed as an expedited claim, they</p> <p>14 could proceed as an individual review</p> <p>15 claim. If there were an entitlement</p> <p>16 to extraordinary treatment, that</p> <p>17 would apply.</p> <p>18 <b>Q. Okay.</b></p> <p>19 A. Whatever -- whatever the</p> <p>20 rules that would apply to the direct</p> <p>21 claimant would apply to the indirect</p> <p>22 claimant.</p> <p>23 <b>Q. Okay. And let me just</b></p> <p>24 <b>be a little bit more specific. Would</b></p>	<p>1 MR. DEMMY: I'll do them</p> <p>2 from down here. If you can't</p> <p>3 hear me, just let me know.</p> <p>4 THE WITNESS: I can hear</p> <p>5 you.</p> <p>6 MR. FINCH: Who are you</p> <p>7 and who do you represent? I</p> <p>8 know who you are. Who do you</p> <p>9 represent?</p> <p>10 MR. DEMMY: I will do</p> <p>11 that.</p> <p>12</p> <p>13 <b>EXAMINATION BY</b></p> <p>14 <b>MR. DEMMY:</b></p> <p>15 <b>Q. My name is John Demmy</b></p> <p>16 <b>and I represent Firemen's Fund</b></p> <p>17 <b>Insurance Company and some other</b></p> <p>18 <b>related insurers.</b></p> <p>19 <b>In the Grace case, does the</b></p> <p>20 <b>committee conduct its business</b></p> <p>21 <b>through periodic meetings?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Do you participate in</b></p> <p>24 <b>those meetings?</b></p>
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<p>1 <b>the PI -- will the PI trust apply the</b></p> <p>2 <b>payment percentage of a payment --</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. -- on an indirect PI</b></p> <p>5 <b>trust claim?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Okay. Can you tell me,</b></p> <p>8 <b>on the flip side, if the plan is</b></p> <p>9 <b>confirmed how will the asbestos PI</b></p> <p>10 <b>trust calculate an insurer's payment</b></p> <p>11 <b>obligation under an asbestos</b></p> <p>12 <b>reinsurance agreement?</b></p> <p>13 A. I have no idea.</p> <p>14 MR. FINCH: Objection.</p> <p>15 <b>Q. Sorry, sorry. Asbestos</b></p> <p>16 <b>reimbursement agreement.</b></p> <p>17 MR. FINCH: Objection to</p> <p>18 form and foundation.</p> <p>19 A. I have no idea.</p> <p>20 MS. ABRAVANEL: Okay, I</p> <p>21 have no further questions.</p> <p>22 Thank you.</p> <p>23 THE WITNESS: Anybody</p> <p>24 else?</p>	<p>1 A. I do.</p> <p>2 <b>Q. Who typically</b></p> <p>3 <b>participates in those meetings?</b></p> <p>4 A. Counsel for each of the</p> <p>5 individual committee members, counsel</p> <p>6 for the committee, and whoever else</p> <p>7 in a particular situation might be</p> <p>8 asked to participate.</p> <p>9 <b>Q. Do the appointed</b></p> <p>10 <b>committee members, the holders of</b></p> <p>11 <b>claims, ever participate in the</b></p> <p>12 <b>committee meetings?</b></p> <p>13 A. Not usually.</p> <p>14 <b>Q. Do they ever?</b></p> <p>15 A. There have been an</p> <p>16 occasion where they did but it's --</p> <p>17 <b>it would be most unusual.</b></p> <p>18 MR. DEMMY: Okay, that's</p> <p>19 all the questions I have.</p> <p>20 Thank you.</p> <p>21 THE WITNESS: Anybody</p> <p>22 else?</p> <p>23 MR. FINCH: Next?</p> <p>24 MR. DOWNEY: Phil</p>



W R GRACE & CO NEW

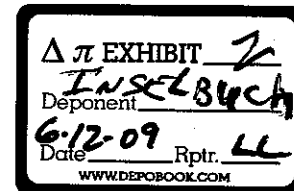
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K



CURRENT REPORT PURSUANT

TO SECTION 13 OR 15(D) OF THE

SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) April 6, 2008

W. R. GRACE & CO.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

(Commission File Number)  
7500 Grace Drive

1-13953

(IRS Employer Identification No.)  
65-0773649  
21044

Columbia, Maryland  
(Address of Principal Executive Offices) (Zip Code)

(410) 531-4000

W R GRACE & CO NEW

Filing Date: 04/06/08

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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W. R. GRACE & CO.

FORM 8-K

W R GRACE & CO NEW

Filing Date: 04/06/08

CURRENT REPORT

Item 7.01. Regulation FD Disclosure.

On April 6, 2008, W. R. Grace & Co., on behalf of itself and its subsidiaries and affiliates that are debtors in the Chapter 11 cases, (the "Company") entered into an agreement in principle (the "Agreement") with the Official Committee of Asbestos Personal Injury Claimants, the Future Claimants Representative and the Official Committee of Equity Security Holders, all parties-in-interest in the Company's Chapter 11 case, that would settle all present and future asbestos-related personal injury claims against the Company on the terms and conditions set forth therein. Certain terms and conditions of the Agreement are described in the press release attached hereto as Exhibit 99.1. The description of the terms and conditions of the Agreement is qualified in its entirety by reference to the provisions of the Agreement attached hereto as Exhibit 99.2.

The information furnished pursuant to this Item 7.01, including Exhibit 99.1 and Exhibit 99.2, shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), or otherwise subject to the liabilities of such section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

99.1 Press Release

99.2 Term Sheet for Resolution of Asbestos Personal Injury Claims dated as of April 6, 2008

W R GRACE & CO NEW

Filing Date: 04/06/08

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed by the undersigned, thereunto duly authorized.

W. R. GRACE & CO.  
(Registrant)  
By /s/ Mark A. Shelnitz  
Mark A. Shelnitz  
Secretary

Dated: April 7, 2008

W R GRACE & CO NEW

Filing Date: 04/06/08

Exhibit 99.1

Grace News #2919

Media Relations:	Investor Relations:
William Corcoran	Bridget Sarikas
T +1 410.531.4203	T +1 410.531.4194
Ewilliam.corcoran@grace.com	Ebridget.sarikas@grace.com

#### GRACE ANNOUNCES SETTLEMENT OF ASBESTOS PERSONAL INJURY CLAIMS

COLUMBIA, Maryland, April 7, 2008 -- W. R. Grace & Co. (NYSE: GRA) today announced an agreement in principle that would settle all present and future asbestos-related personal injury claims. The agreement, reached with the Official Committee of Asbestos Personal Injury Claimants, the Future Claimants Representative and the Official Committee of Equity Security Holders, requires the following assets to be paid into a trust to be established under Section 524(g) of the United States Bankruptcy Code:

Cash in the amount of \$250 million;

Warrants to acquire 10 million shares of Grace common stock at an exercise price of \$17.00 per share, expiring one year from the effective date of a plan of reorganization;

Rights to proceeds under Grace's asbestos-related insurance coverage;

The value of cash and stock under the litigation settlement agreements with Sealed Air Corporation and Fresenius Medical Care Holdings, Inc.; and

W R GRACE & CO NEW

Filing Date: 04/06/08

Deferred payments at \$110 million per year for five years beginning in 2019, and \$100 million per year for ten years beginning in 2024; the deferred payments would be obligations of Grace backed by 50.1% of Grace's common stock to meet the requirements of Section 524(g).

The agreement in principle contemplates the filing of a plan of reorganization and related documents with the Bankruptcy Court. The plan will be subject to approval of its co-proponents, exit financing, and Bankruptcy Court and District Court approvals.

"This agreement in principle is a very important step in emerging from Chapter 11," said Fred Festa, Grace's Chairman, President and Chief Executive Officer. "In this challenging global marketplace, we need to be able to focus all of our efforts on increasing shareowner value and continued improvement in our core businesses. The agreement and the Plan of Reorganization that will be based on it will be good for our shareholders, customers, creditors, and our employees. A lot of work remains to be done before we can confirm a Plan of Reorganization, but I am optimistic we will be successful in reaching that goal by the end of this year or early in 2009."

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"Also, I want to point out that the Plan of Reorganization will preserve all employee benefits. During the seven years we have been in Chapter 11, our people have nearly doubled Grace's sales and dramatically improved the core businesses. We look forward to final approval of our Plan of Reorganization when we can once again operate without the constraints of Chapter 11," said Festa.

\* \* \* \* \*

Grace is a leading global supplier of catalysts and other products to petroleum refiners; catalysts for the manufacture of plastics; silica-based engineered and specialty materials for a wide-range of industrial applications; sealants and coatings for food and beverage packaging, and specialty chemicals, additives and building materials for commercial and residential construction. With annual sales of more than \$3.1 billion, Grace has about 6,500 employees and operations in over 40 countries. For more information, visit Grace's web site at [www.grace.com](http://www.grace.com).

W R GRACE &amp; CO NEW

Filing Date: 04/06/08

\* \* \* \* \*

This announcement contains forward-looking statements, that is, information related to future, not past, events. Such information generally includes the words "believes," "plans," "intends," "targets," "will," "expects," "anticipates," "continues" or similar expressions. For these statements, Grace claims the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Grace is subject to risks and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements or that could cause other forward-looking information to prove incorrect. Factors that could cause actual results to materially differ from those contained in the forward-looking statements include: Grace's bankruptcy, plans of reorganization proposed by Grace and others, Grace's legal proceedings (especially the Montana criminal proceeding and environmental proceedings), the cost and availability of raw materials and energy, Grace's unfunded pension liabilities, costs of environmental compliance, risks related to foreign operations, especially, security, regulation and currency risks and those factors set forth in Grace's most recent Annual Report on Form 10-K, quarterly report on Form 10-Q and current reports on Form 8-K, which have been filed with the Securities and Exchange Commission and are readily available on the Internet at [www.sec.gov](http://www.sec.gov). Reported results should not be considered as an indication of future performance. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date thereof. Grace undertakes no obligation to publicly release any revisions to the forward-looking statements contained in this announcement, or to update them to reflect events or circumstances occurring after the date of this announcement.

###

Corporate Communications

W. R. Grace &amp; Co.-Conn.

7500 Grace Drive

Columbia, MD 21044



W R GRACE &amp; CO NEW

Filing Date: 04/06/08

Exhibit 99.2

W. R. GRACE & CO., et al.  
CASE NO. 01-1139 (JFK)

TERM SHEET FOR RESOLUTION OF  
ASBESTOS PERSONAL INJURY CLAIMS

This Term Sheet sets forth certain of the principal terms and conditions under which the Debtors, the Official Equity Security Committee, the Official Committee of Personal Injury Claimants ("ACC") and the Future Claimants Representative ("FCR") in the above-captioned Chapter 11 cases are prepared to file a plan of reorganization ("Plan") as co-proponents providing for the resolution of all asbestos personal injury claims and liabilities, including without limitation all asbestos personal injury claims pending at the filing date of the Chapter 11 cases and those arising subsequent thereto (collectively, "Asbestos PI Claims"). This Term Sheet also sets forth the proposed treatment of other key classes of claims asserted in the Chapter 11 cases. This Term Sheet has been produced for settlement purposes only and is subject to the provisions of Rule 408 of the Federal Rules of Evidence.

I. Treatment of Claims

A. Asbestos PI Trust

All Asbestos PI Claims will be channeled to a trust (the "Asbestos PI Trust") that is established in accordance with Section 524(g) of the United States Bankruptcy Code. The Asbestos PI Trust will pay claims from trust assets in accordance with a trust agreement and trust distribution procedures established by the ACC and FCR in connection with the Plan.

1. Funding of Asbestos PI Trust at Emergence. On the Effective Date of the Plan, the Asbestos PI Trust shall receive the following, each of which shall be a condition to the Plan becoming effective:

a. Cash Payment: \$250 million, plus, if the Effective Date occurs after December 31, 2008, interest from January 1, 2009 to the Effective Date accrued at the same rate applicable to Grace's senior debt.

b. Insurance: the assignment by W. R. Grace & Co.-Conn. ("Grace") and all of its affiliates to the Asbestos PI Trust, of all insurance policies and all insurance proceeds available for payment of Asbestos PI Claims, effective as of the Effective Date, including without limitation:

i. Any such proceeds from the date hereof of all settlements with insurance companies, and all interest accrued thereon;

ii. Any proceeds of the settlement with Equitas held in escrow with all interest accrued thereon;

iii. Any proceeds of all settlements with all insurance companies

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under coverage in place agreements or installment payment arrangements where payment has not yet occurred;

iv. Assignment of and the right to recover on all outstanding insurance policies potentially applicable to personal injury claimants; and

v. The right to recover from all insolvent insurance estates as to which Grace or its affiliates has made a claim and the proceeds of all payments received by Grace or its affiliates from those insolvent estates after the date hereof, and all interest accrued thereon.

Provided however that Grace is in the process of examining its policies and the foregoing will not affect Grace's separate coverages, if any, for losses not arising from asbestos personal injury claims.

The ACC and FCR (or, after the Effective Date, the Asbestos PI Trust) shall control (and Grace shall cooperate in connection with) any negotiations or legal proceedings related to the underlying policies or settlement agreements applicable to Asbestos PI Claims.

c. Warrant: a warrant for 10 million shares of W. R. Grace & Co. ("Parent") common stock, exercisable at \$17 per share, and expiring one year after the Effective Date.

d. Cryovac, Inc. Payment: The consideration contemplated by the Sealed Air Settlement Agreement.

e. Fresenius Medical Care Payment: The proceeds of the payment contemplated by the Fresenius Settlement Agreement.

2. Deferred Payment Obligations: Grace shall make additional payments to the Asbestos PI Trust over a 15 year period as follows: five annual payments of \$110 million commencing on January 2, 2019; and 10 annual payments of \$100 million commencing on January 2, 2024. Such payment obligations shall be subordinate to any bank debt or bonds outstanding and shall be guaranteed by Parent or any successor ultimate parent entity of Grace. Such guaranty shall be secured by an obligation of Parent to issue to the Asbestos PI Trust, in the event an additional payment is not made, the number of shares of Parent common stock which, when

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added to the number of shares of common stock issued and outstanding as of the Effective Date, shall constitute 50.1% of the voting shares of Parent as of the Effective Date (such number of shares shall be equitably adjusted for stock splits, stock dividends, recapitalizations, corporate reorganizations or changes in control of Parent after the Effective Date).

B. Other Classes

1. Administrative Claims: 100% of allowed amount in cash.
2. Priority Tax Claims: 100% of allowed amount in cash.
3. Priority Non-Tax Claims: 100% of allowed amount in cash.
4. Secured Claims: 100% of allowed amount either in cash or by reinstatement.
5. Unsecured Employee Claims (post-retirement health and special pension): 100% of allowed amount by reinstatement.
6. Workers Compensation Claims: 100% by reinstatement.
7. Allowed General Unsecured Claims: 100% of allowed amount plus

W R GRACE & CO NEW

Filing Date: 04/06/08

post-petition interest as follows: (i) for holders of pre-petition bank credit facilities, post-petition interest at the rate of 6.09% from the filing date through December 31, 2005 and thereafter at floating prime, in each case compounded quarterly; and (ii) for all other unsecured claims, interest at 4.19%, compounded annually, or if pursuant to an existing contract, interest at the non-default contract rate.

8. Allowed Environmental Claims: 100% of allowed amount in cash.

9. Traditional Asbestos Property Damage Claims: 100% of allowed amount in cash for settled claims. The Plan shall set forth procedures for the allowance of all Asbestos PD Claims that are disputed as of the Effective Date.

10. ZAI Claims: Unless the Plan Proponents agree otherwise as to the treatment of ZAI Claims, the court shall estimate, for purposes of allowance and distribution, any liability on account of ZAI Claims prior to or in connection with the confirmation of the Plan. ZAI Claims shall be paid 100% of their allowed amount up to the amount of the court's estimate.

II. Channeling Injunctions. The Plan shall contain injunctions under Sections 524(g) and Section 105(a) of the Bankruptcy Code to protect the Debtors, Cryovac, Sealed Air, Fresenius, their affiliates, officers, directors and employees, and other parties in interest and certain insurers. The Plan shall also contain such provisions, injunctions and releases

3

(i) as are necessary to comply with the terms of the Sealed Air Settlement Agreement and the Fresenius Settlement Agreement; and (ii) to the full extent permitted by law, to indemnify, and release all of Grace's officers, directors, employees and professionals, and the members of all official committees, the FCR and their professionals, from any liability on account of claims against Grace, or arising in or in connection with these Chapter 11 cases. The foregoing injunctions, indemnifications and releases shall be at least as extensive as, and consistent with, the injunctions, indemnifications and releases provided for under Grace's Amended Plan currently filed in the Chapter 11 Cases to the extent such latter injunctions, indemnifications and releases are not inconsistent with this Term Sheet.

III. Resolution of Outstanding Issues. The parties agree to cooperate in seeking a resolution of outstanding issues material to or not otherwise resolved in connection with the confirmation of a plan of reorganization.

IV. Binding Effect. This Term Sheet has been approved by all necessary corporate or organizational action of the Board of Directors of

WR GRACE &amp; CO NEW

Filing Date: 04/06/08

Parent and Grace, the ACC, the FCR and the Equity Committee, and shall be binding upon the parties and each of their respective successors and assigns to the fullest extent permitted by applicable law. The parties shall use their best efforts to incorporate the terms of this Term Sheet into a mutually agreeable plan of reorganization to be filed with the Bankruptcy Court as soon as possible.

V. Confidentiality.

The parties shall treat all negotiations regarding this Term Sheet as confidential. Neither the contents nor the existence of this Term Sheet shall be disclosed by any party, either orally or in writing, except to its directors, officers, employees, legal counsel, financial advisors, accountants and clients on a confidential basis until the Debtors have issued a press release announcing the terms and conditions contained herein. Notwithstanding the foregoing, the parties agree that this Term Sheet or the terms of this Term Sheet may be disclosed to the Official Committee of Unsecured Creditors and the Official Committee of Asbestos Property Damage Claimants. Grace will provide counsel to the ACC and counsel to the FCR an opportunity to review and comment on any press release relating to this Term Sheet prior to its issuance.

4.

-----

AGREED TO AND ACCEPTED BY:

Dated: April 6, 2008

THE DEBTORS:

W. R. GRACE & CO., on behalf of itself and its subsidiaries and affiliates that are Debtors in the Chapter 11 cases

By:

Name:

Title:

/s/ Fred Festa

Fred Festa

Chairman, President and Chief Executive Officer

THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

By:

Name:

Title:

/s/ R. Ted Weschler

R. Ted Weschler

Chair of the Committee

THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS:

CAPLIN & DRYSDALE, CHARTERED, on behalf of and in its capacity as counsel to the ACC

By:

Name:

/s/ Elihu Inselbuch

Elihu Inselbuch

THE FUTURE CLAIMANTS REPRESENTATIVE:

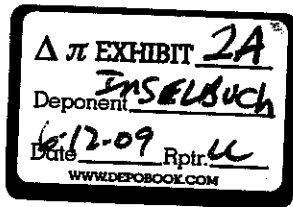
ORRICK, HERRINGTON & SUTCLIFFE LLP, on behalf of and in its capacity as counsel to the FCR

By:

Name:

/s/ Roger Frankel

Roger Frankel



Confidential  
For Settlement Discussions Only

W. R. GRACE & CO., et al.  
CASE NO. 01-1139 (JFK)

**TERM SHEET FOR RESOLUTION OF  
ASBESTOS PERSONAL INJURY CLAIMS**

This Term Sheet sets forth certain of the principal terms and conditions under which the Debtors, the Official Equity Security Committee, the Official Committee of Personal Injury Claimants ("ACC") and the Future Claimants Representative ("FCR") in the above-captioned Chapter 11 cases are prepared to file a plan of reorganization ("Plan") as co-proponents providing for the resolution of all asbestos personal injury claims and liabilities, including without limitation all asbestos personal injury claims pending at the filing date of the Chapter 11 cases and those arising subsequent thereto (collectively, "Asbestos PI Claims"). This Term Sheet also sets forth the proposed treatment of other key classes of claims asserted in the Chapter 11 cases. This Term Sheet has been produced for settlement purposes only and is subject to the provisions of Rule 408 of the Federal Rules of Evidence.

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1. **Funding of Asbestos PI Trust at Emergence.** On the Effective Date of the Plan, the Asbestos PI Trust shall receive the following, each of which shall be a condition to the Plan becoming effective:
  - a. **Cash Payment:** \$250 million, plus, if the Effective Date occurs after December 31, 2008, interest from January 1, 2009 to the Effective Date accrued at the same rate applicable to Grace's senior debt.
  - b. **Insurance:** the assignment by W. R. Grace & Co.-Conn. ("Grace") and all of its affiliates to the Asbestos PI Trust, of all insurance policies and all insurance proceeds available for payment of Asbestos PI Claims, effective as of the Effective Date, including without limitation:

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- i. Any such proceeds from the date hereof of all settlements with insurance companies, and all interest accrued thereon;
- ii. Any proceeds of the settlement with Equitas held in escrow with all interest accrued thereon;
- iii. Any proceeds of all settlements with all insurance companies under coverage in place agreements or installment payment arrangements where payment has not yet occurred;
- iv. Assignment of and the right to recover on all outstanding insurance policies potentially applicable to personal injury claimants; and
- v. The right to recover from all insolvent insurance estates as to which Grace or its affiliates has made a claim and the proceeds of all payments received by Grace or its affiliates from those insolvent estates after the date hereof, and all interest accrued thereon.

Provided however that Grace is in the process of examining its policies and the foregoing will not affect Grace's separate coverages, if any, for losses not arising from asbestos personal injury claims.

The ACC and FCR (or, after the Effective Date, the Asbestos PI Trust) shall control (and Grace shall cooperate in connection with) any negotiations or legal proceedings related to the underlying policies or settlement agreements applicable to Asbestos PI Claims.

- c. Warrant: a warrant for 10 million shares of W. R. Grace & Co. ("Parent") common stock, exercisable at \$17 per share, and expiring one year after the Effective Date.
  - d. Cryovac, Inc. Payment: The consideration contemplated by the Sealed Air Settlement Agreement.
  - e. Fresenius Medical Care Payment: The proceeds of the payment contemplated by the Fresenius Settlement Agreement.
2. **Deferred Payment Obligations**: Grace shall make additional payments to the Asbestos PI Trust over a 15 year period as follows: five annual payments of \$110 million commencing on January 2, 2019; and 10 annual payments of \$100 million commencing on January 2, 2024. Such payment obligations shall be subordinate to any bank debt or bonds

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For Settlement Discussions Only

outstanding and shall be guaranteed by Parent or any successor ultimate parent entity of Grace. Such guaranty shall be secured by an obligation of Parent to issue to the Asbestos PI Trust, in the event an additional payment is not made, the number of shares of Parent common stock which, when added to the number of shares of common stock issued and outstanding as of the Effective Date, shall constitute 50.1% of the voting shares of Parent as of the Effective Date (such number of shares shall be equitably adjusted for stock splits, stock dividends, recapitalizations, corporate reorganizations or changes in control of Parent after the Effective Date).

**B. Other Classes**

1. **Administrative Claims:** 100% of allowed amount in cash.
2. **Priority Tax Claims:** 100% of allowed amount in cash.
3. **Priority Non-Tax Claims:** 100% of allowed amount in cash.
4. **Secured Claims:** 100% of allowed amount either in cash or by reinstatement.
5. **Unsecured Employee Claims (post-retirement health and special pension):** 100% of allowed amount by reinstatement.
6. **Workers Compensation Claims:** 100% by reinstatement.
7. **Allowed General Unsecured Claims:** 100% of allowed amount plus post-petition interest as follows: (i) for holders of pre-petition bank credit facilities, post-petition interest at the rate of 6.09% from the filing date through December 31, 2005 and thereafter at floating prime, in each case compounded quarterly; and (ii) for all other unsecured claims, interest at 4.19%, compounded annually, or if pursuant to an existing contract, interest at the non-default contract rate.
8. **Allowed Environmental Claims:** 100% of allowed amount in cash.
9. **Traditional Asbestos Property Damage Claims:** 100% of allowed amount in cash for settled claims. The Plan shall set forth procedures for the allowance of all Asbestos PD Claims that are disputed as of the Effective Date.
10. **ZAI Claims:** Unless the Plan Proponents agree otherwise as to the treatment of ZAI Claims, the court shall estimate, for purposes of allowance and distribution, any liability on account of ZAI Claims prior to or in connection with the confirmation of the Plan. ZAI Claims shall be paid 100% of their allowed amount up to the amount of the court's estimate.



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For Settlement Discussions Only

- II. Channeling Injunctions.** The Plan shall contain injunctions under Sections 524(g) and Section 105(a) of the Bankruptcy Code to protect the Debtors, Cryovac, Sealed Air, Fresenius, their affiliates, officers, directors and employees, and other parties in interest and certain insurers. The Plan shall also contain such provisions, injunctions and releases (i) as are necessary to comply with the terms of the Sealed Air Settlement Agreement and the Fresenius Settlement Agreement; and (ii) to the full extent permitted by law, to indemnify, and release all of Grace's officers, directors, employees and professionals, and the members of all official committees, the FCR and their professionals, from any liability on account of claims against Grace, or arising in or in connection with these Chapter 11 cases. The foregoing injunctions, indemnifications and releases shall be at least as extensive as, and consistent with, the injunctions, indemnifications and releases provided for under Grace's Amended Plan currently filed in the Chapter 11 Cases to the extent such latter injunctions, indemnifications and releases are not inconsistent with this Term Sheet.
- III. Resolution of Outstanding Issues.** The parties agree to cooperate in seeking a resolution of outstanding issues material to or not otherwise resolved in connection with the confirmation of a plan of reorganization.
- IV. Binding Effect.** This Term Sheet has been approved by all necessary corporate or organizational action of the Board of Directors of Parent and Grace, the ACC, the FCR and the Equity Committee, and shall be binding upon the parties and each of their respective successors and assigns to the fullest extent permitted by applicable law. The parties shall use their best efforts to incorporate the terms of this Term Sheet into a mutually agreeable plan of reorganization to be filed with the Bankruptcy Court as soon as possible.
- V. Confidentiality.**

The parties shall treat all negotiations regarding this Term Sheet as confidential. Neither the contents nor the existence of this Term Sheet shall be disclosed by any party, either orally or in writing, except to its directors, officers, employees, legal counsel, financial advisors, accountants and clients on a confidential basis until the Debtors have issued a press release announcing the terms and conditions contained herein. Notwithstanding the foregoing, the parties agree that this Term Sheet or the terms of this Term Sheet may be disclosed to the Official Committee of Unsecured Creditors and the Official Committee of Asbestos Property Damage Claimants. Grace will provide counsel to the ACC and counsel to the FCR an opportunity to review and comment on any press release relating to this Term Sheet prior to its issuance.

**Confidential**  
**For Settlement Discussions Only**

**AGREED TO AND ACCEPTED BY:**

Dated: April 6, 2008

**THE DEBTORS:**

W. R. GRACE & CO., on behalf of itself and its subsidiaries and affiliates that are Debtors in the Chapter 11 cases

By: \_\_\_\_\_

Name: Fred Festa

Title: Chairman, President and Chief Executive Officer

**THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**

By: \_\_\_\_\_

Name: R. Ted Weschler

Title: Chair of the Committee

**THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS:**

CAPLIN & DRYSDALE, CHARTERED, on behalf of and in its capacity as counsel to the ACC

By: \_\_\_\_\_

Name: Elihu Inselbuch

**THE FUTURE CLAIMANTS REPRESENTATIVE:**

ORRICK, HERRINGTON & SUTCLIFFE LLP, on behalf of and in its capacity as counsel to the FCR

By: \_\_\_\_\_

Name: Roger Frankel

**Confidential**  
**For Settlement Discussions Only**

**AGREED TO AND ACCEPTED BY:**

Dated: April 6, 2008

**THE DEBTORS:**

W. R. GRACE & CO., on behalf of itself and its subsidiaries and affiliates that are Debtors in the Chapter 11 cases

By: \_\_\_\_\_

Name: Fred Festa

Title: Chairman, President and Chief Executive Officer

**THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**

By:  \_\_\_\_\_

Name: R. Ted Weschler

Title: Chair of the Committee

**THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS:**

CAPLIN & DRYSDALE, CHARTERED, on behalf of and in its capacity as counsel to the ACC

By: \_\_\_\_\_

Name: Elihu Inselbuch

**THE FUTURE CLAIMANTS REPRESENTATIVE:**

ORRICK, HERRINGTON & SUTCLIFFE LLP, on behalf of and in its capacity as counsel to the FCR

By: \_\_\_\_\_

Name: Roger Frankel

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TO: 8043793265

PAGE 01  
P.2/2

Confidential  
For Settlement Discussion Only

AGREED TO AND ACCEPTED BY:

Dated: April 6, 2008

**THE DEBTORS:**

W. R. GRACE & CO., on behalf of itself and its subsidiaries and affiliates that are Debtors in the Chapter 11 cases

By:                     

Name: Fred Festa

Title: Chairman, President and Chief Executive Officer

**THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**

By:                     

Name: R. Ted Weschler

Title: Chair of the Committee

**THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS:**

CAPIN & DRYSDALE, CHARTERED, on behalf of and in its capacity as counsel to the ACC

By:                     

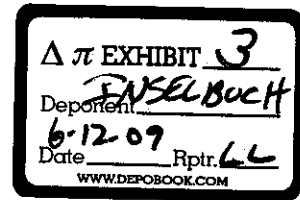
Name: Elihu Inselbuch

**THE FUTURE CLAIMANTS REPRESENTATIVE.**

ORRICK, HERRINGTON & SUTCLIFFE LLP, on behalf of and in its capacity as counsel to the FCR

By:                     

Name: Roger Frankel



## **Preliminary Expert Report on W. R. Grace Trust**

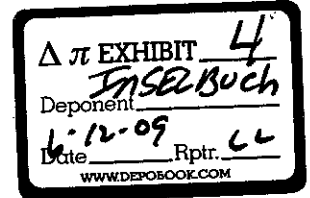
**Mark A. Peterson**

**Legal Analysis Systems**

**March 2009**

REMAINDER OF EXHIBIT OMITTED  
SEE NOTICE OF SERVICE OF  
EXPERT WITNESS REPORT  
(D.I. 21029)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE



In re:

W. R. GRACE & CO., *et al.*<sup>1</sup>

Debtors.

) Chapter 11  
)  
)  
) Case No. 01-01139 (JKF)  
) Jointly Administered  
)  
)  
)  
)

**EXHIBIT 4 TO EXHIBIT BOOK  
TRUST DISTRIBUTION PROCEDURES**

**EXHIBIT 4**

Attached.

7500  
\$60,000

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co. Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., GC Limited Partners I, Inc., (f/k/a Grace Cocoa Limited Partners I, Inc.), GC Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc. GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

REMAINDER OF EXHIBIT OMITTED  
SEE EXHIBIT 4 TO EXHIBIT BOOK  
(D.I. 20874)